

United States
Circuit Court of Appeals
For the Ninth Circuit.

CALIFORNIA CANNERIES COMPANY, a Corporation,
Appellant,
vs.
DUNKLEY COMPANY, a Corporation,
Appellee.

Supplemental Transcript of Record.

Upon Appeal from the United States District Court for the
Northern District of California, Second Division.

Filed

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F. D. Monckton,
Clerk.

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RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the United States Circuit Court of Appeals, in and
for the Ninth Circuit.*

No. 2764.

CALIFORNIA CANNERIES COMPANY, a Cor-
poration,

Appellant,

vs.

DUNKLEY COMPANY, a Corporation,

Appellee.

Stipulation [Re Statement of Evidence, etc.]

WHEREAS, by inadvertance, there was omitted from the printed record of the above-entitled cause lodged with the above-entitled Court, to be used in and upon the appeal in this case, a statement of the evidence introduced by and on behalf of the respective parties upon the trial of this cause in the District Court of the United States, in and for the Northern District of California, Second Division, in the action numbered therein 203, and entitled in the records of said Court, Dunkley Company, plaintiff, vs. California Canneries Company, defendant, and

WHEREAS, there was likewise omitted from the printed record aforesaid, the documentary records and the exhibits received in evidence upon the trial aforesaid notwithstanding the fact that the matters thus omitted were called for by the praecipe, duly filed by the appellant herein to the clerk of said District Court, and notwithstanding said statement and evidence was, within the time allowed by law, duly lodged with said Court,

NOW, THEREFORE, IT IS HEREBY STIPULATED, by and between the respective parties hereto, acting through their respective attorneys that the clerk of the court above entitled may cause the matter thus omitted to be printed and appended to the transcript of the record herein for use upon the appeal in this case.

JOHN H. MILLER,

Attorney for Appellee.

ASHER, MEYERSTEIN & McNUTT,

Attorneys for Appellant.

MAXWELL McNUTT,

Of Counsel.

Due service and receipt of a copy of the within stipulation is hereby admitted this —— day of April, 1916.

Attorney for Appellee.

[Endorsed]: No. 2764. Dept. No. ——. U. S. Circuit Court of Appeals, State of California, Ninth District. California Canneries Co., a Corporation, Appellant, vs. Dunkley Company, a Corporation, Appellee. Stipulation.

*In the District Court of the United States, in and for
the Northern District of California, Second Di-
vision.*

IN EQUITY—No. 203.

DUNKLEY COMPANY,

Plaintiff,

vs.

CALIFORNIA CANNERIES COMPANY,

Defendant.

**Engrossed Statement of the Record of the Proceed-
ings in the Above-entitled Case, to be Used by
the Defendant Above Named, on Appeal to the
United States Circuit Court of Appeals for the
Ninth Circuit.**

The above-entitled cause came on regularly for trial, Friday, the 3d day of December, 1915, by and before the above-entitled court, the Honorable William C. Van Fleet, presiding, plaintiff being represented by John H. Miller, Esq., and Fred Chappel, Esq., and the defendant, by Messrs, Asher, Meyerstein & McNutt, thereupon the following proceedings were had:

**[Statement of Testimony of Melville E. Dunkley, for
Plaintiff.]**

MELVILLE E. DUNKLEY, called for the plaintiff, duly sworn, testified as follows:

“I am 35 years of age; reside at Kalamazoo, Michigan; by occupation, a manufacturer. I have examined the defendant’s machine for peeling peaches. It consists of a scalding of the so-called

(Testimony of Melville E. Dunkley.)

'Grasshopper' model, which is a tank containing, sometimes hot water, and sometimes a solution of caustic soda, with a chute for discharging the contents, operated by an archimedial [1*] screw. From this scalding, the fruit is discharged onto a conveyor table, about 45 feet long, the apron thereof being made of spiral webbing, half-inch mesh the first 5 or 6 feet to the table, covered by metal splash pans to take care of the spatter. Under this metal guard is a series of pipes fitted with nozzles consisting of the common Boston garden nozzle and the so-called Oakland nozzle. Underneath the belt conveyor, and in opposition to the above nozzles, was a battery of similar nozzles, being from 60 to 70 in each battery. There is an arrangement of rollers in pairs, operated on a central shaft, the purpose of which is to cause a jumping or shaking motion of the belt, which being operated at a high speed, would tend to change the position of the fruit on the belt.

At this point, there were introduced into the evidence, marked "Exhibit 1," sketch of defendant's machine made by witness, and United States Letters Patent, No. 1, 104, 175, and dated July 21, 1914, and marked "Plaintiff's Exhibit 2."

In the water-line is a pump evidently to raise the water pressure, supply pipe to each of the batteries is approximately one and one-half inches in diameter and main pipe, two inches. I am familiar with the machine described in the Dunkley patent, and the superiority of the Dunkley method over the hand-

*Page-number appearing at foot of page of original certified Supplemental Transcript of Record.

(Testimony of Melville E. Dunkley.)

peeling method. There are two ways of peeling peaches by hand. One Sinclair-Scott rotary machine, which revolves peaches against a stationary knife and which is somewhat faster than the ordinary hand method. With the Sinclair-Scott machine, a woman could peel 10 to 12 bushels a day. With the hand method, somewhat less, depending on the size of the peaches. The Dunkley machine has peeled 1800 bushels in 9 hours. To work it, there are required a man to feed the machine, a man for the [2] water pressure, 4 or 5 men to carry away the peeled peaches. By the Sinclair-Scott method, one-eighth of the peach is taken off; by the hand method more; by the Dunkley method, only the skin is taken off and the peeled peaches are absolutely uniform, with no marks. On "Exhibit 1," A represents the main tank. The peaches are introduced at the point marked B through a hopper, picked up by the screw contained in spout C and ejected at the point on spout D, the screw being revolved. E represents the motive power; fruit is dropped from the spout C on to moving conveyor table F, which revolves, as indicated by arrow, carries the fruit away from C through and between the opposite spray nozzle G. The scaling tank contains a disintegrating solution. The revolving agitators H and the water supply I. The shaft J causes the conveyor belt to rise and fall, giving a jumping motion to the fruit. There is no brush feature in defendant's machine. Its peeling or eliminating feature is simply the action of the water jets.

(Testimony of Melville E. Dunkley.)

At this juncture, there was introduced into the evidence, marked "Exhibit 3" two nozzles of the type used on defendant's machine.

Cross-examination.

The spray of defendant's machine removes the peeling. The spray in the Dunkley machine removes the peeling. There is no brush in defendant's machine. The novelty of the Dunkley device does not inhere in the nozzle. The novelty of the Dunkley device inheres in the use of jets of water under comparatively high pressure to remove the disintegrating skin from the fruit, no particular form of nozzle being necessary and consists in the fact of water pressure, rather than the character of nozzle by which [3] it is exerted. In my opinion, defendant's machine infringes Dunkley's patent on all points. It has a means for carrying peaches and presenting them to the water jets. It has the jets and its evident function is to present the peaches in as rapid and regular order as possible to the action of the jets, the agitation further being to expose all parts of the fruit to the water. The Dunkley device, as described in the drawing in evidence, is for whole peaches. Defendant's device, described in Exhibit 1 is for half peaches. The Dunkley machine, with the revolving brushes could not be successfully used on halved peaches. We have very successfully used it on halved peaches, however, by removing the revolving brushes and adding in their place either a guard to keep the halved peaches from going off at the side of another series of perforated pipes; they

(Testimony of Melville E. Dunkley.)

are in operation at the present time in that method. With the halved peaches there is scarcely any agitation with the exception that the belt which carries these peaches through runs at such a speed that it gets away from the halved peaches; in other words, it runs away from them. It runs on a slight incline, and the majority of the peaches are either turned over as they go back, that is the belt goes from underneath them, or else they get up on their sides and roll, rolling backwards. This belt travels between 1,000 and 1,500 feet of belt feet every minute and that will raise the peach up, with the halved peach, and while it carries through it will revolve it backwards, in that way presenting all of its surface to the jets of water. The Dunkley machine, as described in exhibit 2, is adapted to peeling whole peaches. The brush, in the Dunkley device, on the whole peach with the solid belt, changes the position of the whole peach, exposing its surface uniformly to the water jets. [4] The brush belt in the Dunkley machine has the same effect on the whole peach that speed does on the half peach. It revolves it backwards, while being carried through the sprays. One cylindrical brush, operating at 350 and the other at 600, so that as the peach goes through the machine it is continually being revolved backwards, being turned over hundreds of times in practically every direction. There are no nozzles used in the Dunkley machine. Perforated pipes answer the same purpose. The brushes in the Dunkley machine are arranged spirally.

At this juncture, there were introduced into evi-

(Testimony of Melville E. Dunkley.)

dence, designs, Plaintiff's Exhibits 4 and 5.

The function of the brushes is as follows: The fruit comes from the scalding into the hopper, shown at the right hand side of exhibit 4. They have a converging bottom, which leads the fruit in single file on to the belt, shown practically in parallel lines with the hopper. The fruit is carried between the brushes, the brush belt running at high speed, having the tendency to revolve the peaches backward. The side brushes engage the peach alternately, so that the one revolving from the top catches the peach and swings it back. The peaches are passed in single file progressively through and between the lines of brushes. A top pipe is mounted above and equally distant between the two revolving brushes, so that jets of water are directed down on to the peach and jets of water from the pipe inside of the brushes are thrown against the peach. In the defendant's device, the agitators do practically the same thing, as the brushes in the Dunkley device. In the defendant's device, the peaches are fed continually and carried on the moving belts, thus spread out by the aid of agitators under the water spray. In the Dunkley device, the peaches on the water [5] spray are arranged parallel with the brushes, there being no brushes in the defendant's device."

The COURT.—“Then, if I gather the effect of your testimony practically, what you regard as the essential principle or patentable principal in your device is the combination by which this fruit after having been processed with the liquor that disinte-

(Testimony of Melville E. Dunkley.)

grates the skin, is passed through between a system of opposing jets of water which removes the skin.

A. With the exception that they really do not have to be opposed.

Q. I am not stating that in any such sense as you take it; it means so arranged that all of the different parts of the surface of the fruit are exposed to the jets at some time when they are passing through.

A. Yes."

At this juncture, sketch made by the witness, was introduced into the evidence and marked "Plaintiff's Exhibit 6."

Exhibit 6 is a drawing of the agitating device in defendant's machine and is the equivalent of the device represented by the two cylinder brushes, K and K-1, in the Dunkley patent. Apart from the brushes, there is no agitating means in the Dunkley device. If the brushes were taken out of the Dunkley machine, the necessary agitation to present the different faces of the fruit to the jets would be accomplished by the speed of the belt. With sufficient water pressure, however, the agitators would be necessary in the defendant's machine. In the Dunkley device, the peaches are carried and exposed to the erosive force of water in single file. When the brushes are withdrawn, the peaches would pass not necessarily in single file. I believe, that the means of presenting the entire surface of the peach in combination with the water jets are practically the same in the defendant's device and the Dunkley device. In the Dunkley device, the belt conveyor [6] con-

(Testimony of Melville E. Dunkley.)

sists of fibre bristles, which become soaked with water and soft, making a cushion for carrying the peaches, there being no metal on the conveyor table, but it is substantially a continuous brush, the brushes being as near together as possible, consistent with permitting the conveyor to rotate.

At this juncture, it was stipulated that the drawing, "Exhibit 1" represented the machine used by the defendant; that the patent, No. 1,104,175, and dated July 21, 1914, had been issued to the Dunkley Company; that the parties to the action respectively are corporations.

Plaintiff here rested.

[Statement of Testimony of Isidor Jacobs, for Defendant.]

ISIDOR JACOBS, called for the defendant, sworn, and testified: That he resided in San Francisco, and is the president of the California Canneries Company, defendant;

That the scalders used for many years in the defendant's machine, as represented by "Plaintiff's Exhibit 1" was an eastern invention and of the so-called "Grasshopper" model.

Defendant rested.

[Statement of Testimony of Samuel J. Dunkley, for Plaintiff, in Rebuttal.]

SAMUEL J. DUNKLEY, called for plaintiff in rebuttal, sworn and testified:

I reside in Kalamazoo, Michigan; age 54; occupation, manufacturer, inventor and canner. I am the

(Testimony of Samuel J. Dunkley.)

inventor of the device covered by United States Letters Patent, No. 1,104,175, dated July 21, 1914, in suit. I first thought of the invention during the peach season of 1902 in Michigan. Made some sketches and plans and peeled some peaches and got ready for a larger machine next year. The first machine was put up in July, 1903, and successfully operated; since then the machine has been used by [7] practically every canner in the country; it has reduced the price of peeling peaches from between 20 and 30 cents a bushel down to practically nothing, has revolutionized the business. We got up the machine and had it running so it would do on the average of 18,000 to 20,000 bushels a season, in the South factory. The application for patent was filed in 1904, and remained in the Patent Office in interference until issued.

Plaintiff rested.

ASHER, MEYERSTEIN and McNUTT,
Attorneys for Defendant.
MAXWELL McNUTT,
Of Counsel.

IT IS HEREBY STIPULATED by and between the respective parties hereto that the foregoing Engrossed Statement is correct.

JOHN H. MILLER,
Atty. for Plff.
ASHER, MEYERSTEIN & McNUTT,
Attorneys for Defendant.
MAXWELL McNUTT,
Of Counsel.

Feb. 8th, 1916.

Approved Feb. 15, 1916.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Feb, 17, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [8]

**[Certificate of Clerk U. S. District Court to En-
grossed Statement of the Record of the Proceed-
ings, Filed February 17, 1916.]**

No. 203—EQUITY.

DUNKLEY COMPANY,

vs.

CALIFORNIA CANNERIES COMPANY,

United States of America,

Northern District of California,

City and County of San Francisco,—ss.

I, Walter B. Maling, Clerk of the District Court of the United States of America, in and for the Northern District of California, do hereby certify the foregoing to be a full, true and correct copy of the original Engrossed Statement of the record of the proceedings, filed February 17, 1916, in the above-entitled cause, as the same remains of record and on file in the office of the clerk of said court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court,

this 5th day of April, A. D. 1916.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern
District of California.

By J. A. Schaertzer,
Deputy Clerk.

[Ten-cent Internal Revenue Stamp. Canceled
April 5. 1916. J. A. S.]

[Endorsed]: No. 2764. United States Circuit
Court of Appeals for the Ninth Circuit. California
Canneries Company, a Corporation, Appellant, vs.
Dunkley Company, a Corporation, Appellee. Sup-
plemental Transcript of Record. Upon Appeal from
the United States District Court for the Northern
District of California, Second Division.

Filed April 8, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

**[Stipulation that Original Exhibits Need not be
Printed, etc.]**

*In the United States Circuit Court of Appeals, in and
for the Ninth Circuit.*

No. 2764.

CALIFORNIA CANNERIES COMPANY, a Corpo-
ration,

Appellant,

vs.

DUNKLEY COMPANY, a Corporation,

Appellee.

It is hereby stipulated by and between the respective parties hereto, acting through their respective attorneys, that the clerk of the above-entitled court may omit from the record to be printed and used herein on the appeal of this case, the documentary evidence and exhibits offered and received in evidence upon the trial of the case in the District Court of the United States, in and for the Northern District of California,.

JOHN H. MILLER.

Attorney for Appellee.

ASHER, MEYERSTEIN & McNUTT,

Attorneys for Appellant.

MAXWELL McNUTT,

Of Counsel.

[Endorsed]: No. 2764. In the United States Circuit Court of Appeals for the Ninth Circuit. California Canneries Co., a Corporation, Appellant, vs. Dunkley Company, a Corporation, Appellee. Stipulation. Filed May 1, 1916. F. D. Monckton, Clerk.